DRN-5423459

The complaint

Mrs Y complains that HSBC UK Bank Plc won't refund the money she lost when she was the victim of a scam.

What happened

In August 2022, Mrs Y's ex-husband told her about an investment company he had been successfully investing with. He said he had been investing for several months and receiving good returns. So Mrs Y contacted the investment company and agreed to invest herself as well.

Mrs Y was given access to the investment company's trading platform, where she could see the deposits she had made and the profit it said she was making. And she was shown how to send money from her HSBC account to another bank she opened an account with, and then use it to purchase cryptocurrency which she would send on to the platform.

I've set out the payments Mrs Y made out of her HSBC account below:

Date	**Details**	**Amount**
11 August 2022	To account with other bank	£1,000
11 August 2022	To account with other bank	£5,000
11 August 2022	To account with other bank	£3,000
19 August 2022	To account with other bank	£5,000
20 August 2022	To account with other bank	£10,000
8 September 2022	To account with other bank	£20,000
9 September 2022	To account with other bank	£20,000
12 September 2022	To account with other bank	£10,000
14 September 2022	**To cryptocurrency exchange**	**£10**
15 September 2022	From cryptocurrency exchange	£1,745.55 credit
21 September 2022	From cryptocurrency exchange	£4,342.85 credit
22 September 2022	To account with other bank	£1,000
30 September 2022	To account with other bank	£20,000
3 October 2022	To account with other bank	£20,000
4 October 2022	To account with other bank	£10,000
19 October 2022	To account with other bank	£20,000
20 October 2022	To account with other bank	£20,000
21 October 2022	To account with other bank	£10,000
3 November 2022	*To account with other bank*	*£50*
3 November 2022	*To account with other bank*	*£150*
4 November 2022	*To account with other bank*	*£8,000*
4 November 2022	From cryptocurrency exchange	£1,271.76 credit
24 November 2022	From cryptocurrency exchange	£1,600.67 credit
5 December 2022	From cryptocurrency exchange	£6,295.27 credit

Unfortunately, we now know the investment company was a scam. The scam was uncovered after Mrs Y asked to withdraw the profit the platform showed she had made, but was told she had to pay a large amount in before she could do so. Mrs Y then realised she had been the victim of a scam and reported the payments she had made to HSBC.

HSBC investigated but said the payments were sent to another account in Mrs Y's own name, and she had confirmed they were genuine. It said it hadn't made an error and didn't agree to refund the money Mrs Y had lost. Mrs Y wasn't satisfied with HSBC's response, so referred a complaint to our service.

One of our investigators looked at the complaint. They thought HSBC should have had concerns when Mrs Y made the second payment here, and done more to protect her before allowing the payment to go through. They also thought it would be fair for Mrs Y, and the other bank the payment was sent to, to share responsibility for her loss. So they recommended HSBC refund 33% of the money Mrs Y lost, from the second payment onward. HSBC disagreed with our investigator, so the complaint has been passed to me.

What I've decided – and why

I've considered all the available evidence and arguments to decide what's fair and reasonable in the circumstances of this complaint.

Banks are expected to make payments in line with their customers' instructions. And Mrs Y accepts she made the payments here. So while I recognise she didn't intend for the money to ultimately go to scammers, she did authorise the payments. And so the starting position in law is that HSBC was obliged to follow her instructions and make the payments. So Mrs Y isn't automatically entitled to a refund.

However, taking into account relevant law, regulators rules and guidance, relevant codes of practice and what I consider to have been good industry practice at the time, I consider it fair and reasonable that in August 2022 HSBC should:

- Have been monitoring accounts and any payments made or received to counter various risks, including anti-money laundering, countering the financing of terrorism, and preventing fraud and scams.

- Have had systems in place to look out for unusual transactions or other signs that might indicate that its customers were at risk of fraud (among other things). This is particularly so given the increase in sophisticated fraud and scams in recent years, which account providers are generally more familiar with than the average customer.

- In some circumstances, irrespective of the payment channel used, have taken additional steps, or made additional checks, before processing a payment, or in some cases declined to make a payment altogether, to help protect customers from the possibility of financial harm from fraud.

- have been mindful of – among other things – common scam scenarios, how the fraudulent practices are evolving (including for example the common use of multi-stage fraud by scammers, including the use of payments to cryptocurrency accounts as a step to defraud consumers) and the different risks these can present to consumers, when deciding whether to intervene.

And so I've also considered whether HSBC should have identified that Mrs Y was at heightened risk of financial harm from fraud as a result of any of these payments.

Should HSBC have recognised that Mrs Y was at risk of financial harm from fraud?

The first payment Mrs Y made from her HSBC account as part of this scam wasn't for a particularly large amount, or for an amount where I'd expect HSBC to have identified it as suspicious based on its size alone. So I don't think it's unreasonable that HSBC didn't identify that Mrs Y could be at risk of financial harm from fraud as a result of it and didn't take any further steps before allowing it to leave her account.

But when Mrs Y tried to make the second payment here, for £5,000 on 11 August 2022, I think HSBC should have identified that she was at heightened risk of financial harm from fraud. This payment was for a significantly larger amount. It was also the second payment Mrs Y had made to the same payee in quick succession and it was funded by a large credit into her account immediately beforehand – which is a pattern of behaviour often seen when customers are falling victim to a scam. So I think HSBC should have intervened at this point and carried out additional checks before allowing this payment to go through.

And I think a proportionate response to the risk I think HSBC should have identified here would have been for it to carry out some sort of human intervention with Mrs Y to attempt to establish the circumstances surrounding the payment, before allowing it to debit her account.

Did HSBC do enough to protect Mrs Y?

HSBC did carry out an intervention when Mrs Y tried to make this payment. It temporarily blocked the payment and asked her to call to discuss it. And when Mrs Y called, HSBC asked her a number of questions about the payment and then gave her several warnings about potential scams.

It asked Mrs Y to confirm it was her own account she was sending the payment to, and that she had previously sent money to that account – which she confirmed. HSBC also asked why Mrs Y was making several payments, rather than sending all the money in one go – to which Mrs Y replied that she didn't realise she could send such a large amount in one go. HSBC asked why she was making the payment – and Mrs Y said it was for online shopping. And HSBC then asked if anyone had asked her to set up an account or move money to keep it safe or if anyone had told her how to answer the questions it was asking – to which Mrs Y replied no.

HSBC then warned Mrs Y that scammers could pretend to be from banks or other organisations and ask you to make payments, but that it would never ask a customer to make a payment to safeguard their money. HSBC then agrees to release the payment.

But while I recognise that HSBC did ask questions about the circumstances surrounding this payment, I don't think the questions it asked went far enough to address the risk I think it should have identified. HSBC has argued that it confirmed Mrs Y was moving funds to her own account with another regulated financial institution she had made a payment to before, and so it did enough to satisfy itself the payment was legitimate. But I disagree.

I don't think HSBC's responsibilities to monitor accounts and look out for signs that its customers may be at risk of fraud stop just because the payments are being made to another account in that customer's name. I think HSBC should have been mindful of common scam scenarios and the evolving fraud landscape including, around this time, the increased use of multi-stage fraud by scammers where funds are sent between customers' own accounts before being sent on – particularly to Electronic Money Institution's (EMI's), as was the case here. So I don't think the fact the payments were going to another account in Mrs Y's name means HSBC shouldn't bear any responsibility or was enough to satisfy the concerns I think it should have had. So I still think HSBC should have carried out additional checks before allowing this payment to go through.

I also appreciate that Mrs Y said the payment was for ‘online shopping’. But she’s said she only said this because she felt scared and intimidated about the questions she was being asked at the time. And I’ve not seen anything to suggest she had been told to lie when asked about the payment, or given any kind of cover story by the scammers to give if she was asked.

So I don’t think HSBC should have been satisfied by just the explanation Mrs Y gave of ‘online shopping’ – particularly given the increased use of multi-stage fraud I mentioned above. I think it should have asked more probing and in-depth questions to establish more detail around the circumstances of the payment including, for example, why Mrs Y was moving money between her accounts before using it for online shopping, whether the funds were being sent on to another account again from the account she was sending them to now, and whether anyone had suggested to her to move her money between accounts in this way.

I think HSBC should also have explained to Mrs Y that it was asking these questions in an effort to protect her from possible fraud and scams, that it was seeing an increasing number of scams where customers were asked to move their money between their own accounts before sending it on to scammers and that, if Mrs Y was being asked to move her money in this way and then send it on again, she was likely the victim of a scam.

Would further action from HSBC have prevented Mrs Y losses from that point?

As Mrs Y hadn’t been given a cover story or been told to lie about the payment, I think it’s unlikely she would have been able to answer these additional questions I think HSBC should have asked in a plausible and convincing way. And, in any event, as there were several key hallmarks of multi-stage fraud present in the circumstances of her payments, I think it’s likely a warning highlighting these features would have resonated with her and caused her to consider the payments she was making to the investment company further.

I’m also conscious that Mrs Y ultimately came to realisation herself that she might be the victim of a scam, when she was told by the scammers that she needed to pay a large amount in before she could withdraw the profit she was told she had made. She then looked into the investment company further and discovered it was a scam. I think this demonstrates that Mrs Y was not oblivious to the potential risk and, all things considered, I’ve concluded that questions and warnings of the type I’ve described would have resonated with her and dissuaded her from going ahead with the second payment and therefore prevented her losses from this point on.

Therefore, on the balance of probabilities, had HSBC asked more probing and in-depth questions and provided Mrs Y with a proportionate warning that gave details about multi-stage fraud, I believe it would have resonated with her. She could have paused and looked more closely into the investment company before proceeding and made further enquiries into investment scams. And as Mrs Y looking more closely into the investment company is what ultimately appears to have uncovered the scam, I'm satisfied that a timely warning to her from HSBC would very likely have caused her to take similar steps – revealing the scam and preventing her further losses.

Should Mrs Y bear any responsibility for her losses?

I've considered whether it would be fair for Mrs Y to bear some responsibility for her loss. In considering this point, I've taken into account what the law says about contributory negligence as well as what's fair and reasonable in the circumstances of this complaint.

And while I appreciate that this was a sophisticated scam where Mrs Y was given access to a trading platform which appeared to show her investment and the profit she was making, I think there were a number of things about what was happening and what she was told that should have caused her significant concern.

Most of the communication Mrs Y had with the investment company appears to have been via an instant messaging app. She also doesn't appear to have been sent any documentation or paperwork relating to the investment she was making. And I wouldn't usually expect a legitimate investment company to communicate in this way, and particularly without providing at least some more formal record of her investment.

Mrs Y has said she had concerns about whether the investment company was legitimate, both when her ex-husband first told her about it and at times during the period she was making payments towards it. But she doesn't appear to have taken significant action to check who the company was or whether it was legitimate before making or continuing to make the payments. And while I appreciate she was not an experienced investor and may not have known what checks she could do, I don't think it's unreasonable to have expected her to try to carry out more checks into who she was sending the money to – particularly given the significant amount of money she was sending and the concerns she's said she had.

From what Mrs Y has said, she was also told that the value of her and her ex-husband's investments had increased significantly – more than doubling in value, and in only a few months. But I don't think these kinds of returns are plausible, particularly in such a short period of time. So I think being told she could or had made such a significant profit should have caused Mrs Y significant concern that what she was being told was too good to be true.

I sympathise with the position Mrs Y has found herself in and recognise that she has been the victim of a cruel scam. But I think there were a number of things here which should have caused her significant concern, particularly when taken all together. And I don't think she did enough to satisfy those concerns or that the seemingly genuine parts of the scam should have been enough to overcome them.

So I think it would be fair and reasonable for her to also bear some responsibility for the loss she suffered.

Redress

For the reasons set out above, I think HSBC should have done more to protect Mrs Y from the risk of financial harm from fraud it should have identified. And that, if it had done so, her losses from the second payment of £5,000 on 11 August 2022 would have been prevented. I also think it would be fair for Mrs Y to bear some responsibility for the money she lost.

Most of the payments Mrs Y made from her HSBC account were sent on to an account with another bank, before being used to purchase cryptocurrency and sent on to the scammers from there. And, in a separate case, our service has found that the other bank should also share some responsibility for Mrs Y's loss.

The payments Mrs Y made to her account with the other bank on 3 and 4 November 2022 of £50, £150 and £8,000 (highlighted in italics on the table above) were exchanged into cryptocurrency at the other bank but then never left Mrs Y's account. So she did not lose this money and it wouldn't be fair to require HSBC to refund any of it.

The payments Mrs Y made from her HSBC account to the other bank as a result of the scam, from the second payment onwards, therefore total £174,000. And Mrs Y received a total of £15,256.10 back from the cryptocurrency exchange, so this should be deducted from this loss for a total of £158,743.90.

As HSBC, the other bank, and Mrs Y are all to equally share responsibility for this loss, HSBC would then be required to refund 33% of this loss – totalling £52,385.49.

Mrs Y also made a payment directly to the cryptocurrency exchange from her HSBC account of £10 on 14 September 2022 (highlighted in bold in the table above). So as this payment didn't go to the account with the other bank, it wouldn't be fair for it to share responsibility for this loss. And so just Mrs Y and HSBC would share responsibility for the loss from this payment, and HSBC should then refund 50% of this payment – totalling £5.

Together with the 33% refund from the other payments, the total refund HSBC should now make is therefore £52,390.49.

My final decision

I uphold this complaint and require HSBC UK Bank Plc to:

- Refund Mrs Y £52,390.49 – as set out above
- Pay Mrs Y 8% simple interest on this refund, from the date of the payments until the date of settlement

Under the rules of the Financial Ombudsman Service, I'm required to ask Mrs Y to accept or reject my decision before 1 August 2025.

Alan Millward
Ombudsman